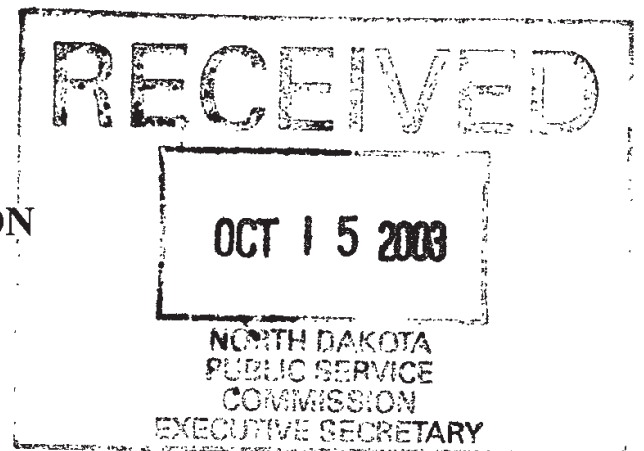


STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



In the Matter of Northwest Dakota Cellular of)
North Dakota Limited Partnership)
d/b/a Verizon Wireless)
Petition for Designation as an)
Eligible Telecommunications Carrier)
)

Case No. _____

**APPLICATION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER AND
PETITION FOR REDEFINITION OF SERVICE AREAS OF
RURAL TELEPHONE COMPANIES**

I. Introduction

1. Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless ("Verizon Wireless"), hereby applies to be designated as an eligible telecommunications carrier ("ETC") for purposes of qualifying to obtain federal universal service support throughout the certain areas identified in Exhibit A. This Application is made pursuant to and based upon 47 U.S.C. § 214(e) and N.D. Cent. Code § 49-21-01.7(12).

2. Section 214(e) of the federal Telecommunications Act of 1996 ("Act"), the rules and regulations of the Federal Communications Commission ("FCC"), specifically 47 C.F.R. § 54.101(a), and N.D. Cent. Code § 49-21-01.8 establish the mandatory and exclusive criteria for designation of a federal ETC in North Dakota. This Application affirms and demonstrates that Verizon Wireless meets all applicable requirements to be designated an ETC.

3. Verizon Wireless requests unconditional ETC designation for those study areas of Nemont Telephone Cooperative, Inc. ("Nemont Telephone"), Noonan Farmers Telephone Company ("Noonan Farmers"), and Northwest Communications Cooperative ("Northwest Communications") as set forth on Exhibit A. Verizon Wireless' request for ETC designation in

areas served by other rural telephone companies, however, is subject to the further condition that the Commission redefine the service areas of those rural telephone companies listed on Exhibit A into service areas based on the companies' respective wire centers, pursuant to 47 C.F.R. § 54.207(a). To the extent that Verizon Wireless' service area does not cover the entirety of a rural telephone company's wire center, Verizon Wireless' request is further conditioned on the Commission redefining each such partial area as a separate service area. Verizon Wireless asks the Commission to conditionally designate Verizon Wireless as an ETC in those newly redefined service areas, subject to approval of the redefinition by the FCC under 47 C.F.R. § 54.207(c).

II. Identification of Verizon Wireless

4. Pursuant to Commission Rule 69-02-02-04(1), Verizon Wireless states its name, address, telephone number, and designated contact person as follows:

Northwest Dakota Cellular of North Dakota Limited Partnership,
d/b/a Verizon Wireless
One Verizon Place
Mail Code – GA1A2FRP
Alpharetta, GA 30004
Attention: Diana Stevens
Phone: (678) 339-4478
Fax: (678) 339-8575

5. Verizon Wireless is licensed by the FCC to provide commercial mobile radio services ("CMRS") under federal law. Verizon Wireless currently provides cellular service in North Dakota Rural Service Area 1 ("North Dakota RSA 1") and currently serves customers in the following North Dakota counties: Divide, Williams, Mountrail, Burke, Renville, McLean, and Ward. Attached as Exhibit B is a map illustrating Verizon Wireless' current authorized cellular coverage areas, with the wire center boundaries of each rural telephone company within those areas superimposed.

6. Northwest Dakota Cellular of North Dakota Limited Partnership is one of several operating entities doing business as "Verizon Wireless" in North Dakota. Over 34 million subscribers nationwide and over 135,000 subscribers in North Dakota are served under the brand name "Verizon Wireless."

III. Verizon Wireless Meets All the Requirements for Designation as an ETC

7. Under 47 U.S.C. § 214(e)(2) and N.D. Cent. Code §§ 49-21-01.7(12), (13), the Commission has the authority to designate Verizon Wireless as an ETC in its requested designated areas. The requirements for ETC designation are set forth in 47 U.S.C. § 214(e)(1)-(2), 47 C.F.R. § 54.101, and incorporated by reference in N.D. Cent. Code § 49-21-01.8. As set forth more fully below, Verizon Wireless: (1) is a common carrier; (2) provides the supported services; and (3) will meet all service and advertising obligations of an ETC. In addition, in areas served by rural telephone companies, Verizon Wireless' designation as an additional ETC serves the public interest.

A. Verizon Wireless is a Common Carrier Providing Service Over its Own Facilities

8. The first requirement for ETC designation is that the applicant is a common carrier. 47 U.S.C. § 214(e)(1). As a CMRS provider, Verizon Wireless is a "common carrier" under federal law. *See* 47 C.F.R. § 20.9(a)(7).

B. Verizon Wireless Offers All Supported Services and Functionalities

9. The second requirement for ETC designation is that the applicant provide the services set forth in 47 C.F.R. § 54.101(a)(1)-(9) throughout the requested designated service areas. 47 U.S.C. § 214(e)(1)(A). Verizon Wireless is a facilities-based provider of telecommunications services to customers in North Dakota through its CMRS offerings, and will provide all of the supported services specified in 47 C.F.R. § 54.101(a) throughout its designated

service areas using its own facilities, or a combination of its own facilities and leased facilities. Verizon Wireless currently offers and is able to provide each of the services and functionalities identified by the FCC in 47 C.F.R. § 54.101(a)(1)-(9) as follows:

(a) Voice-grade access to the public switched telephone network. "Voice-grade access" means the ability to make and receive phone calls, within a frequency range of between 300 to 3000 Hertz. 47 C.F.R. § 54.101(a)(1). Through its interconnection arrangements with local telephone companies, including Qwest Corporation, all North Dakota customers of Verizon Wireless are able to make and receive calls on the public switched telephone network within the FCC's specified frequency range.

(b) Local usage. An ETC must include an amount of local usage minutes free of charge as part of a universal service offering. 47 C.F.R. § 54.101(a)(2). To date, the FCC has not quantified any minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue. *See Universal Service Further Notice of Proposed Rulemaking*, FCC 98-278 (Oct. 26, 1998) ("*October 1998 NPRM*"). Moreover, unlimited local usage is not required by any ETC. *In the Matter of Federal-State Joint Board on Universal Service*, CC 96-45, FCC 03-170, Order and Order on Reconsideration (rel. July 14, 2003) ("*July 2003 Order*"). Verizon Wireless will meet this requirement by including local usage in each offering to its customers. In addition, Verizon Wireless will comply with any specific local usage requirements adopted by the FCC in the future and required of a federal ETC.

(c) Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. 47 C.F.R. § 54.101(a)(3). Verizon Wireless currently uses out-of-band

digital signaling and in-band multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling in satisfaction of this requirement.

(d) Single-party service or its functional equivalent. "Single-party service" means that only one party will be served by a subscriber loop or access line, in contrast to a multi-party line. 47 C.F.R. § 54.101(a)(4). The FCC's regulation further states that a CMRS provider meets the requirement of offering single-party service when it offers a dedicated message path for the length of a user's particular transmission. *Id.*; *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, FCC 97-157, ¶ 162 (rel. May 7, 1997) ("*Universal Service Order*"). Verizon Wireless meets this requirement of single-party service by providing a dedicated message path for the duration of all customer calls.

(e) Access to emergency services. The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. Enhanced 911, or "E911," which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), is only required if a public emergency service provider makes arrangements with the local provider for the delivery of such information. 47 C.F.R. § 54.101(a)(5). Verizon Wireless currently provides access to the 911 system for its customers, and has implemented and will continue to implement E911 services consistent with the FCC's rules and orders and local public safety answering point requests. To date, Verizon Wireless has received one request for Phase I and no requests for Phase II E911 service. *See Corr Wireless Communications, LLC*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-2855, ¶ 9 n.28 (rel. Oct. 31, 2002) (noting provision of 911, implementation of Phase I E911 where requested, and waiver of Phase II E911). The Phase I request is on a statewide basis and is pending.

(f) Access to operator services. "Access to operator services" means any automatic or live assistance provided to a customer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). Verizon Wireless meets this requirement by providing all of its customers with access to operator services provided by either itself or other entities.

(g) Access to interexchange service. An ETC must offer customers access to interexchange service for purposes of making and receiving interexchange calls. 47 C.F.R. § 54.101(a)(9). Equal access to interchange service – i.e., the ability of a customer to access a presubscribed long distance carrier by dialing 1+number – is not required. *July 2003 Order* at ¶¶ 14-15. Verizon Wireless presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements it has with several interexchange carriers (IXCs). Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code.

(h) Access to directory assistance. "Access to directory assistance" means the ability to place a call directly to directory assistance. 47 C.F.R. § 54.101(a)(8). Verizon Wireless meets this requirement by providing all of its customers with access to directory assistance by dialing "411" or "555-1212."

(i) Toll limitation for qualifying low-income consumers. An ETC must offer either "toll control" or "toll blocking" services to qualifying Lifeline customers at no charge. The FCC no longer requires an ETC to provide both services as part of the toll limitation service required under 47 C.F.R. § 54.101(a)(9) if the carrier is incapable of providing both. *See Universal Service Fourth Order on Reconsideration*, FCC 97-420 (rel. Dec. 30, 1997). Verizon Wireless currently has no Lifeline customers because only a carrier designated as an ETC can

participate in Lifeline. *See* 47 C.F.R. § 54.400-.415. Once designated an ETC, Verizon Wireless will participate in Lifeline, Link-Up, and Tel-Assistance as required, and will provide a toll blocking service in satisfaction of this requirement. Verizon Wireless will utilize its existing toll-blocking technology to provide the service to its Lifeline, Link-Up, and Tel-Assistance customers, at no charge, as part of its service offerings.

C. Verizon Wireless Will Offer and Advertise the Availability of Supported Services

10. Verizon Wireless provides the supported services today within the requested designated areas described on Exhibit A using its existing network facilities. Upon designation, Verizon Wireless will offer and provide the supported services within those areas consistent with the obligations of an ETC.

11. The third requirement for ETC designation is that an applicant advertise the availability of the supported services and charges using media of general distribution. 47 U.S.C. § 214(e)(1)(B). Verizon Wireless currently offers and advertises its services throughout its requested designated service areas using several different media, including newspaper, television, radio and billboard advertising. Once designated, Verizon Wireless will advertise the availability of the supported services and charges therefor using media of general distribution, in accordance with the requirements of 47 C.F.R. § 54.201(d)(2). Additionally, Verizon Wireless will comply with all applicable provisions of N.D. Admin. Code § 69-09-05-12.

IV. Verizon Wireless will Comply with Service Area Requirements

12. Verizon Wireless currently serves areas also served by eight rural telephone companies, namely, Nemont Telephone, Noonan Farmers, Northwest Communications, Midstate Telephone Company ("Midstate Telephone"), Reservation Telephone Cooperative ("Reservation Telephone"), SRT Communications, Inc. ("SRT Communications"), Missouri Valley

Communications ("Missouri Valley"), and West River Telecommunications ("West River Telecom").

13. For areas served by a rural telephone company, Section 214(e)(5) of the Act provides that the ETC's designated service area must be that rural telephone company's study area. A rural telephone company's "study area" is generally defined as all of the company's existing certificated exchange areas in a given State. *Universal Service Order*, ¶ 172 n.434.

14. Verizon Wireless serves the entire study area of Nemont Telephone, Noonan Farmers, and Northwest Communications and thus satisfies Section 214(e)(5) as to the areas served by those telephone companies.

15. But the respective study areas of Midstate Telephone, Reservation Telephone, SRT Communications, Missouri Valley, and West River Telecom do not correspond with Verizon Wireless' CMRS licensed area or existing signal coverage area. Thus, it is necessary in this proceeding for the Commission to redefine the service area requirement for these companies from the study area to the wire center level, pursuant to 47 C.F.R. § 54.207, to enable Verizon Wireless to meet the federal ETC requirements under 47 U.S.C. § 214(e). To the extent that Verizon Wireless' service area does not cover the entirety of a rural telephone company's wire center, the Commission must further redefine each such partial area as a separate service area.

16. The Act and the FCC's regulations authorize the FCC and the Commission to act in concert to develop an alternative service area for a rural telephone company in accordance with 47 C.F.R. § 54.207(c)-(d). The sole requirement in establishing a service area other than the study area is that the FCC and the State commission each give full consideration to the Joint Board's recommendations and explain their rationale for reaching a different conclusion. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Universal Service Order*, ¶ 187.

17. Verizon Wireless seeks unconditional ETC designation in the study areas of Nemont Telephone, Noonan Farmers, and Northwest Communications, and conditional ETC designation in the wire centers of Midstate Telephone, Reservation Telephone, SRT Communications, Missouri Valley, and West River Telecom identified on Exhibit A. The map attached as Exhibit B compares Verizon Wireless' current authorized cellular coverage areas with the wire center boundaries of each rural telephone company. Verizon Wireless currently provides signal coverage throughout these rural telephone company wire centers. Verizon Wireless' request for conditional ETC designation is subject to the redefinition of the service area for the rural telephone companies listed on Exhibit A from the study area to the wire center level, and then further to the partial service areas as required.

V. **Designation of Verizon Wireless as an ETC in the State of North Dakota Serves the Public Interest**

18. For areas served by a rural telephone company, the Commission must find that designating an additional ETC serves the public interest in accordance with 47 U.S.C. § 214(e)(2). Verizon Wireless states that its designation in the areas served by Nemont Telephone, Noonan Farmers, Northwest Communications, Midstate Telephone, Reservation Telephone, SRT Communications, Missouri Valley, and West River Telecom will serve the public interest.

19. The Commission has determined that the public interest analysis under 47 U.S.C. § 214(e)(2) should balance increased benefits of competition against any proven detrimental impacts on the preservation and advancement of universal services. *In the Matter of Western Wireless Corporation Designated Eligible Carrier Application*, No. PU-1564-98-428, ¶¶ 11-38 (Oct. 3, 2001). As an ETC, Verizon Wireless will be able to provide universal service on a more competitively neutral basis than is the case today. The rural telephone companies in North

Dakota remain landline monopoly providers, and the only significant source of competition will come from wireless carriers. With access to universal service funding, Verizon Wireless can offer competitive services to North Dakota consumers on a more even-handed basis.

20. Verizon Wireless will provide the supported services to North Dakota consumers with service offerings that will be different from landline offerings. Verizon Wireless' service offerings have a larger local calling area, as well as the benefits of mobility. Because Verizon Wireless' network supports the provisions of data services, customers will be able to combine basic universal services with advanced services if they so desire.

21. Wireless technology and networks have been rapidly deployed in the past 15 years. This deployment and network expansion must continue if rural consumers will have full access to this technology in the future. The use of federal universal service support to provide universal services and extend wireless networks in rural areas of North Dakota clearly benefits the public interest by ensuring these networks will be available to deliver basic and advanced services to North Dakota consumers.

22. Designation of Verizon Wireless as an ETC will provide an incentive to the incumbent carriers in the requested designated areas to improve their existing networks in order to remain competitive, resulting in improved services and benefits to consumers. The benefits of increased competition can be expected to lead to better service and the provision of new, innovative services. Verizon Wireless will provide to consumers the benefits of mobility, larger local calling areas, and where requested by the PSAP, GPS location assistance for customers dialing 911.

23. Designation of Verizon Wireless as an ETC will serve the public interest because Verizon Wireless will provide all of the supported services required by the Commission, will

participate in the Lifeline and Link-Up programs as required by the FCC's Rules, and will otherwise comply with all FCC Rules governing universal service programs, which are designed to ensure that the public interest standards of the Act are achieved. Allowing Verizon Wireless access to universal service subsidies will allow Verizon Wireless to continue to enhance and expand its network infrastructure to better serve consumers and to compete with other carriers on a level playing field.

24. Verizon Wireless' designation will not adversely affect or otherwise threaten the provision of universal services by the rural telephone companies. Under the current funding mechanisms, rural telephone companies will continue to receive universal service support based on an embedded cost methodology until 2006, and will not lose support if they lose lines to a competitor. This extended transition period – as well as their continued receipt of implicit subsidies within intrastate access rates – ensures the rural companies can move successfully to competitive markets.

25. Accordingly, designation of Verizon Wireless as an additional ETC in the areas served by the rural telephone companies will serve the public interest.

VI. Redefinition of Rural Telephone Company Service Areas

26. Verizon Wireless' request for ETC designation is subject to the Commission's action to redefine the service areas of the rural telephone companies listed on Exhibit A, except Nemont Telephone, Noonan Farmers, and Northwest Communications. As stated above, the Act and the FCC's rules provide that the service area of a rural telephone company shall be the "study area" of the rural telephone company, until and unless the FCC and the State commission both agree to redefine the service area. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b). 47 C.F.R. § 54.207 provides the mechanism by which the FCC will process a request by a State

commission for redefinition of a service area. The decision to redefine the service area must be made after taking into account recommendations of the Federal-State Joint Board. *Id.*

A. Service Area Redefinition Is Consistent With Joint Board Standards

27. The FCC identified three factors initially recommended by the Joint-Board which should be considered by the Commission and the FCC when determining the appropriateness of redefining a rural telephone company's service area. The first factor is the risk of cream skimming. The FCC noted that if a competitor were required to serve a rural telephone company's entire study area, the risk of "cream skimming" would be reduced because a competitive ETC would be prevented from selectively targeting service only to the lowest cost exchange of the rural ILEC's study area. *Universal Service Order*, ¶ 189. As the Joint Board explained:

We note that some commenters argue that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize "cream skimming" by potential competitors. Potential "cream skimming" is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area. Competitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company's study area.

In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, 12 FCC Rcd. 87, ¶ 172 (rel. Nov. 8, 1996) ("*Joint Board Recommendations*").

28. Second, a State commission and the FCC must consider the regulatory status enjoyed by rural telephone companies under the Act. The FCC determined that initially establishing a study area for a rural telephone company's service area was appropriate, at least temporarily, in recognition of the different treatment afforded to smaller rural telephone companies which are exempt from certain of the Act's requirements. *Universal Service Order*, ¶ 189. In making its recommendation, the Joint Board had reasoned:

For example, rural telephone companies are initially exempt from the interconnection, unbundling, and resale requirements of 47 U.S.C. § 251(c). The 1996 Act continues this exemption until the relevant state commission finds, inter alia, that a request of a rural telephone company for interconnection, unbundling, or resale would not be unduly economically burdensome, would be technically feasible, and would be consistent with section 254. Moreover, while a state commission must designate other eligible carriers for non-rural areas, states may designate additional eligible carriers for areas served by a rural telephone company only upon a specific finding that such a designation is in the public interest.

Joint Board Recommendations, ¶ 173.

29. The third factor to be considered is whether any administrative burdens might result from the redefinition of the service area. A rural telephone company's universal service support payments are currently based on a rural company's embedded costs determined at the study area level. *Universal Service Order, ¶ 189.* The Joint Board initially expressed concern that rural telephone companies might have difficulty calculating costs on a less-than-study area level. The Joint Board stated:

Another reason to retain existing study areas is that it is consistent with our recommendation that the determination of the costs of providing universal service by a rural telephone company should be based, at least initially, on the Company's embedded costs. Rural telephone companies currently determine such costs at the study area level. We conclude, therefore, that it is reasonable to adopt the current study areas as the service areas for rural telephone companies rather than impose the administrative burden of requiring rural telephone companies to determine embedded costs on a basis other than study areas.

Joint Board Recommendations, ¶ 174.

30. Despite its initial decision to adopt the study area as the rural telephone companies' service area, the FCC has now stated a policy favoring redefinition in instances where a rural carrier's study area is large and/or non-contiguous. In response to issues raised by competitive ETCs and wireless carriers who might not be able to provide facilities-based service throughout a rural company's entire study area, the FCC has expressly urged State commissions to explore redefinition for purposes of ETC designations. The FCC cautioned that requiring a

new entrant to serve a non-contiguous service area as a prerequisite to ETC eligibility would impose a "serious barrier to entry, particularly for wireless carriers" and would be "particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service." *Universal Service Order*, ¶ 190.

31. Verizon Wireless requests that the Commission redefine the service areas of the rural telephone companies listed on Exhibit A, except Nemont Telephone, Noonan Farmers, and Northwest Communications, on an individual wire center basis for purposes of designating an ETC under 47 U.S.C. § 214(e). To the extent that Verizon Wireless' service area does not cover the entirety of a rural telephone company's wire centers, Verizon Wireless requests that the Commission redefine each such partial area as a separate service area. The study areas of these rural telephone companies contain multiple wire centers, which are either wholly or partially not located within the scope of Verizon Wireless' authorized service areas. The most logical and appropriate method of redefining these service areas is by individual wire centers, and then by partial wire center areas where necessary. Redefining these service areas as such for purposes of ETC designations will promote competition by eliminating a barrier to entry into the universal services market. This approach also would enable Verizon Wireless to be designated a federal ETC in the wire center areas within its existing licensed and signal coverage area consistent with the public interest determination of the Commission.

32. The Commission can proceed to redefine the service areas as outlined above while appropriately taking into account the three factors noted by the Joint Board and adopted by the FCC. The first factor relating to a risk of cream skimming is not present. Verizon Wireless seeks redefinition of the rural telephone company service areas on an individual wire center basis and, where necessary, partial wire center basis, so it can be designated as an ETC in those areas

for which it is licensed and has the ability to provide facilities-based services. Redefinition on this basis will preserve and advance universal service by establishing designated service areas that are more reflective of the areas actually served. Redefinition furthers competition and protects the incumbents from selective targeting of specific areas with the lowest cost and highest support. In short, there will be no opportunity for cream skimming.

33. The second factor relating to the special status of rural LECs can also appropriately be taken into account by redefining on a wire center and partial wire center basis. The redefinition of the rural telephone company service areas on this basis will not compromise or impair the unique treatment of these companies as rural telephone companies under Section 251(f) of the Act. Consequently, the companies will still retain the statutory exemptions from interconnection, unbundling and resale requirements under 47 U.S.C. § 251(c) even if their service areas are redefined for purposes of ETC designations.

34. The Act's public interest factor for the designation of an additional ETC in the service areas of these rural telephone companies under 47 U.S.C. § 214(e)(2) will remain in place. The continued existence of the public interest standard was noted by the FCC as a safeguard available to a State commission to support a redefinition request for service areas on a less-than-study area level. *Universal Service Order*, ¶ 190. This public interest factor will remain as an effective check to prevent the designation of an additional competitive ETC who may seek to target only low cost areas or otherwise pose a detriment to the rural consumers of the incumbents. Thus, the incumbent LECs would retain their unique status and special treatment as rural telephone companies under the Act consistent with the Joint Board's recommendations if their study areas were redefined on a wire center and partial wire center basis.

35. The third and final Joint Board factor relating to the administrative ease of calculating the costs of the rural telephone companies on a less-than-study area level is likewise not an issue. There are no administrative costs to consider because any federal universal service support available to a competitive ETC in an area served by one of the rural telephone companies would be determined based on the per-line support available to the rural telephone company itself. 47 C.F.R. § 54.307(a). Moreover, this current funding mechanism will remain in place for approximately another four years, when the FCC is expected to make changes to the funding mechanism for rural telephone companies.

36. Accordingly, the Commission should act to redefine the service areas of Midstate Telephone, Reservation Telephone, SRT Communications, Missouri Valley, and West River Telecom on an individual wire center basis and, where necessary, on a partial wire center basis, in order to foster competition and bring new telecommunications services to rural North Dakota. Consistent with the factors articulated by the FCC based on the Joint Board's recommendations, the Commission should order redefinition of the study areas to a wire center and partial wire center basis.

B. Redefinition is Necessary to Promote Competition and Advance Universal Service

37. The redefinition of the Midstate Telephone, Reservation Telephone, SRT Communications, Missouri Valley, and West River Telecom service areas is necessary for the promotion of competition and the advancement of universal service. Unless the service areas are redefined, Verizon Wireless is precluded from being designated as an ETC in *any* of these five rural telephone companies' wire centers because Verizon Wireless cannot serve the entire study area. Redefinition is in the public interest because it will enable Verizon Wireless, and other competitors, to bring new services and new technologies to customers of North Dakota's rural

telephone companies, who now have no choice of universal service providers. Unless the Commission establishes a different definition of service area for these companies in this proceeding, those wide-ranging study areas will pose an impenetrable barrier to entry for not only Verizon Wireless, but also any other competitive carrier, especially cellular providers, seeking ETC status. Because competitor and incumbent service territories are geographically different, it would be nearly impossible for any other competitive carrier to compete with the incumbents.

38. These large and non-contiguous study areas create a disincentive to competition. This type of barrier to entry was appropriately recognized by the Washington Utilities and Transportation Commission when it successfully applied to the FCC to redefine the study areas of rural LECs in its State. The Washington Commission noted: "The designation of the service area impacts the ease with which competition will come to rural areas The wider the service area defined by the state commission, the more daunting the task facing a potential competitor seeking to enter the market." *Petition for Agreement With Designation of Rural Company Eligible Telecommunications Carrier Service Areas at the Exchange Level and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Washington Util. & Transp. Comm'n, Docket No. 970380, at 3 (Aug. 1998). The Washington Commission concluded that smaller service areas for the designation of ETCs in rural areas will promote competition and speed deregulation. *Id.* at 9.

39. The FCC has previously determined that redefinition of rural telephone company service areas to the exchange or wire center basis facilitates local competition by enabling new providers to serve relatively small areas. *In the Matter of Petition for Agreement With Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for*

Approval of the Use of Disaggregation of Study Areas of the Purpose of Distributing Portable Federal Universal Service Support, Memorandum Opinion and Order, CC Docket No. 96-45, DA 99-1844, ¶ 8 (rel. Sept. 9, 1999). The FCC noted: "We find that our concurrence with rural LEC petitioners' request for designation of their individual exchanges as service areas is warranted in order to promote competition." *Id.* The FCC concluded that Washington's "effort to facilitate local competition justifies [the FCC's] concurrence with the proposed service area designation." *Id.*

40. The redefinition of the Midstate Telephone, Reservation Telephone, SRT Communications, Missouri Valley, and West River Telecom listed service areas to an individual wire center basis and, where necessary, partial wire center basis, will foster competition in North Dakota. Redefining these study areas for purposes of determining ETC service areas will enable Verizon Wireless and other carriers to offer competitive universal services to the customers of these rural telephone companies. This fostering of competition comports with the goals of the Act and the FCC's directives. Unless the Commission seeks redefinition, the customers of these five rural telephone companies' wire centers Verizon Wireless desires to serve will be denied all the benefits of competition that Congress and the FCC have sought to foster. Accordingly, this Commission should order that the Midstate Telephone, Reservation Telephone, SRT Communications, Missouri Valley, and West River Telecom service areas should be redefined into service areas on an individual wire center basis and, where necessary, partial wire center basis, for ETC designation purposes.

41. The Commission should proceed to redefine the service areas as requested herein notwithstanding N.D. Cent. Code § 49-21-01.8. Any State law provision that limits a federal ETC to providing the supported services throughout a rural telephone company's study area is

inapplicable to this proceeding under both 47 U.S.C. § 254(f) and 47 U.S.C. § 253(a). 47 U.S.C. § 254(f) limits State authority to adopting "regulations not inconsistent with the [FCC]'s rules to preserve and advance universal service." (Emphasis added). Section 49-21-01.8 is inconsistent and directly conflicts with both 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b). Because Verizon Wireless' Application seeks redefinition of certain study areas consistent with federal law, the study area requirement in N.D. Cent. Code § 49-21-01.8 does not apply to this proceeding. Section 49-21-01.8 is also inapplicable and unenforceable because it effectively prevents Verizon Wireless from providing universal service to North Dakota residents, contrary to federal law. No State statute or regulation may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate telecommunications service. 47 U.S.C. § 253(a). Thus, both 47 U.S.C. § 254(f) and 47 U.S.C. § 253(a) preempt the imposition of an inconsistent or contrary State law like Section 49-21-01.8.

VII. Conclusion

42. The Act and the North Dakota Century Code, supplemented by the Commission's rules, establish clear, consistent and competitively fair mechanisms for allowing carriers, including a CMRS provider, to be designated as an ETC for the purpose of federal universal service support. Verizon Wireless provides the supported services, satisfies all applicable requirements subject to the redefinition of the rural telephone company service areas, and can and will meet the obligations of an ETC. Verizon Wireless' designation will bring new technology, lower rates, and better service, and so is clearly in the public interest.

43. Verizon Wireless respectfully requests the Commission to follow the directives and principles of the Act and to grant its Application by issuing an order unconditionally designating Verizon Wireless as an ETC pursuant to 47 U.S.C. § 214(e) in the Nemont Telephone, Noonan Farmers, and Northwest Communications study areas and conditionally

designating Verizon Wireless as an ETC in the service areas of the other rural telephone companies listed in Exhibit A. In order to effectuate the Commission's designation of Verizon Wireless as an ETC in the exchanges of the rural telephone companies listed on Exhibit A, and as a condition thereto, the Commission should seek to redefine the service areas of those rural telephone companies to the individual wire center and, where necessary, partial wire center, consistent with purposes of 47 C.F.R. § 54.207.

Respectfully submitted,

Dated: October 15, 2003

BRIGGS AND MORGAN, P.A.

By 

Mark J. Ayotte

Kevin M. Decker

2200 First National Bank Building

332 Minnesota Street

Saint Paul, Minnesota 55101

(651) 808-6600

(651) 808-6450 (facsimile)

Thomas D. Kelsch

Kelsch, Kelsch, Ruff & Kranda

103 Collins Avenue

P.O. Box 1266

Mandan, North Dakota 58554-7266

(701) 663-9818

(701) 663-9810 (facsimile)

*Counsel for Northwest Dakota Cellular of
North Dakota Limited Partnership
d/b/a Verizon Wireless*

EXHIBIT A

I. Areas for Which Verizon Wireless Seeks Unconditional ETC Designation

1. Nemont Telephone Cooperative, Inc. – Study Area
 - East Westby
 - Fortuna
 - Ambrose
2. Noonan Farmers Telephone Company – Study Area
 - Noonan
3. Northwest Communications Cooperative – Study Area
 - Grenora
 - Crosby
 - Alamo
 - Wildrose
 - McGregor
 - Marmon
 - Round Prairie
 - Epping
 - Ray
 - Tioga
 - Columbus
 - Lignite
 - Powers Lake
 - Flaxton
 - Bowbells

II. Areas for Which Verizon Wireless Seeks Conditional ETC Designation

1. Midstate Telephone Company – Redefined Study Area Wire Centers
 - Portal
 - Stanley
 - All other wire centers or partial wire centers located within the North Dakota RSA 1
2. Reservation Telephone Cooperative – Redefined Study Area Wire Centers
 - Norma
 - Kenmare
 - Spencer
 - Ross
 - New Town
 - Parshall

- Plaza
 - Makoti
 - Ryder
 - Douglas
 - Max
 - Roseglen
 - Emmet
 - Garrison
 - All other wire centers or partial wire centers located within the North Dakota RSA 1
3. SRT Communications, Inc. – Redefined Study Area Wire Centers
- Sherwood
 - Tolley
 - Mohall
 - Donnybrook
 - Lansford
 - Carpio
 - Minot AFB
 - Glenburn
 - Berthold
 - Des Lacs
 - Burlington
 - Minot
 - Deering
 - South Prairie
 - Sawyer
 - All other wire centers or partial wire centers located within the North Dakota RSA 1, except Butte
4. Missouri Valley Communications – Redefined Study Area Wire Centers
- Williston
 - All other wire centers or partial wire centers located within the North Dakota RSA 1
5. West River Telecommunications Cooperative – Redefined Study Area Wire Centers
- Riverdale
 - Underwood
 - Turtle Lake
 - Washburn
 - Mercer

- McCluskey
- All other wire centers or partial wire centers located within the North Dakota RSA 1

EXHIBIT B

ND -1 RSA



ND -1 RSA

ND1 Wire Center by Company Name

■	BEK COMMUNICATIONS COOPERATIVE	(1)
■	MIDSTATE TELEPHONE CO.	(2)
■	MISSOURI VALLEY COMMUNICATIONS, INC.	(1)
■	NEMONT TELEPHONE COOPERATIVE, INC.	(3)
□	NOONAN FARMERS TELEPHONE CO.	(1)
■	NORTHWEST COMMUNICATIONS COOPERATIVE	(15)
■	RESERVATION TELEPHONE COOPERATIVE	(14)
■	SRT COMMUNICATIONS, INC.	(14)
■	WEST RIVER TELECOMMUNICATIONS COOPERATIVE - ND	(5)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

In the Matter of Northwest Dakota Cellular of)
North Dakota Limited Partnership)
d/b/a Verizon Wireless)
Petition for Designation as an) Case No. _____
Eligible Telecommunications Carrier)
)

CERTIFICATION OF MARK R. SMITH

I, the undersigned, Mark R. Smith, do hereby certify as follows:

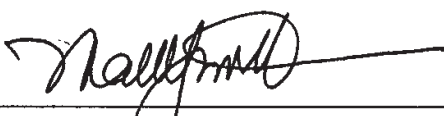
1. I serve as Director – Financial Reporting and Partnership Relations for Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless ("Verizon Wireless") and each of its affiliates.

2. This Certification is submitted in support of Verizon Wireless' Application for Designation as an Eligible Telecommunications Carrier and Petition for Redefinition of Service Areas of Rural Telephone Companies ("Application").

3. I further declare that I have reviewed the Application and that the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge and belief.

I certify that the foregoing is true and correct to the best of my knowledge, information and belief.

Date: October 10, 2003



Mark R. Smith